Tengah Estates Sdn Bhd v Pentadbir Tanah Daerah Klang

HIGH COURT (SHAH ALAM) — CIVIL APPLICATION NO 15-23-89
KC VOHRAH J
26 MARCH 1996

Land Law *— Acquisition of land — Objection against award — Valuation based on market comparison method — Whether government valuer made proper adjustments to value of comparables — Whether government valuer took into account the date of transaction of the comparables — Whether surveyor's fees could be claimed*

The objector was the registered owner of Lot 1762, Mukim of Damansara, Selangor ('the subject property') which was acquired for a highway project, The New Klang Valley Expressway. The acquisition was effected under s 8 of the Land Acquisition Act 1960 ('the Act') and the government awarded RM2,354,240 (at RM80,000 per acre) for the acquisition of the subject property based on the valuation of a government valuer who adopted the market comparison method. The objector argued that it should have been valued at RM140,000 per acre. The objector disputed the quantum of the adjustments made by the government valuer in respect of the properties used as comparables. The complaint was that the government valuer had failed to take into account the fact that the subject property enjoyed a supply of water and electricity, that it was immediately adjacent to a lot of land with a housing estate on it and had failed to allow upward adjustments in relation to one of the comparables used for the 'time factor' and for 'road frontage' and had instead made an 'exorbitant' downward adjustment for the location factor. Therefore, the dispute was on the quantum of adjustments to be made for factors relating to the potentiality of the comparable properties for development, location, shape and size and the time of valuation as both the private and government valuers used basically the same comparables in assessing the value of the subject property.

Held, dismissing the objection:

(1) The assessment of the market value of the subject property by the government valuer had been done correctly and the value was in fact generous. Furthermore, the government valuer had taken into account the date of transaction of the comparables and he had also given due allowance for expected increases after the date of the acquisition of some of the comparables (see pp 436G–I, 437D).

(2) There is nothing in the provisions of the Act and the Schedule thereto to justify the making of an award to include the surveyor's fees (see p 437D–E; *Harrisons and Crosfields (M) Sdn Bhd v Pemungut Hasil Tanah, Wilayah Persekutuan* [1988] 2 MLJ 299 followed).

[Bahasa Malaysia summary

Pembantah adalah pemilik berdaftar Lot 1762, Mukim Damansara, Selangor ('hartanah itu') yang diambil untuk projek lebuhraya, The New Klang Valley Expressway. Pengambilan itu dibuat di bawah s 8 Akta Pengambilan Tanah 1960 ('Akta itu') dan pihak kerajaan telah memberikan award sebanyak RM 2,354,240 (iaitu RM80,000 seekar) untuk pengambilan hartanah itu berdasarkan penilaian oleh penilai kerajaan yang telah menggunakan kaedah perbandingan pasaran. Pembantah mengatakan bahawa ianya patut dinilai pada kadar RM140,000 seekar. Pembantah mempertikaikan kuantum pelarasan yang dibuat oleh penilai kerajaan terhadap hartanah-hartanah yang digunakan sebagai perbandingan. Aduan yang timbulkan adalah bahawa penilai kerajaan telah gagal untuk mengambil kira hakikat bahawa harta itu mempunyai bekalan elektrik dan air, bahawa ia bersebelahan dengan satu lot tanah yang mempunyai kawasan perumahan di atasnya dan telah gagal untuk membenarkan pelarasan ke atas berkaitan dengan satu daripada hartanah bandingan yang digunakan untuk 'faktor masa' dan untuk 'kawasan berdepan jalan' dan telah membuat pelarasan ke bawah yang keterlaluan untuk faktor lokasi. Maka, pertikaian di sini melibatkan kuantum pelarasan yang sepatutnya dibuat untuk faktor berkaitan dengan potensi hartanah bandingan untuk pembangunan, lokasi, bentuk dan saiz dan juga waktu penilaian dibuat kerana penilai tanah swasta dan kerajaan telah pun menggunakan hartanah bandingan yang sama dalam menilai harta itu.

Diputuskan, menolak bantahan itu:

(1) Penilaian harga pasaran hartanah itu oleh penilai kerajaan telah pun dijalankan dengan betul dan nilai yang ditetapkan pada hakikatnya adalah baik. Lebih-lebih lagi, penilai kerajaan telah mengambil kira tarikh transaksi hartanah bandingan itu dan dia juga memperhitungkan kenaikan yang diduga selepas tarikh pengambilan beberapa hartanah bandingan itu (lihat ms 436G–I, 437D).

(2) Tidak terdapat apa-apa peruntukan di dalam Akta itu dan Jadualnya yang boleh menjustifikasikan pemberian award yang merangkumi bayaran bagi perkhidmatan juruukur (lihat ms 437D–E; *Harrisons and Crosfields (M) Sdn Bhd v Pemungut Hasil Tanah, Wilayah Persekutuan* [1988] 2 MLJ 299 diikut).]

[*Editorial Note*: The objector has appealed to the Court of Appeal vide Civil Appeal No B–01–20–1994.]

Notes

For cases on objection against award given in acquisition of land, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1277–1292.

A **Cases referred to**

Harrisons and Crosfields (M) Sdn Bhd v Pemungut Hasil Tanah, Wilayah Persekutuan [1988] 2 MLJ 299

Pentadbir Tanah Daerah Petaling v Glenmarie Estate Ltd [1992] 1 MLJ 331

B **Legislation referred to**

Land Acquisition Act 1960 ss 1(i)(b), 8

KC Tan (*Syed Alwi, Ng & Teoh*) for the objector.

C *Zaharah bte Ibrahim* (State Legal Advisor) for the respondent.

KC Vohrah J: I agreed with the views of the assessors Tuan Haji Yahaya bin Hj Abdullah and En Julian Xavier that the objection of Tengah Estates Sdn Bhd should be dismissed and I so dismissed the objection.

D The view of Tuan Haji Yahaya was that the compensation that was assessed by the government assessor in respect of the land acquired by the State Government of Selangor, Lot 1762, Mukim of Damansara, District of Petaling in Selangor ('the subject property') 'was a bit generous and the claim should be dismissed'. En Julian Xavier was of the view that the land value in 1981 (year of acquisition) was much less than it would be today E and that '(the) government offer was generous'.

The objector was the registered owner of the subject property. The subject property was acquired for a highway project, The New Klang Valley Expressway. The subject property was 29.428 acres and formed part of an oil palm estate of 163.480 acres. The acquisition was effected F under s 8 of the Land Acquisition Act 1960 ('the Act') after a gazette notification, GN No 931, dated 8 October 1981.

The government awarded RM2,354,240 (ie at RM80,000 per acre) for the acquisition of the subject property based on the valuation of a government valuer. The objector argued that it should be RM140,000 per G acre.

In accordance with s 1(i)(b) of the Act, the date of declaration in the gazette is the material date of valuation. The government valuer used the comparison method, a method which entails the analysis and comparison of comparable or similar properties sold or acquired in the vicinity of the subject property at a date quite near to the material date of the valuation H of the subject property (ie 8 October 1981) by him after giving consideration to three dissimilarities between the properties compared and the subject property. The objector while not disputing the use of the comparables disputed the quantum of the adjustments made by the government valuer in respect of the properties. The complaint was that he had failed to take I into account that the subject property enjoyed a supply of water and electricity, that it was immediately adjacent to a lot of land with a housing estate on it and that he had also failed to allow upward adjustments in relation to comparable Lot 111 (which will be adverted to later) for the

'time factor' and for 'road frontage' and that he had made instead an 'exorbitant' downward adjustment for the location factor.

Thus, the dispute was on the quantum of adjustments to be made for factors relating to the potentiality of the compared properties for development, their location, their shape and size and the time of valuation as both the private and government valuers used basically the same comparables in assessing the value of the subject matter.

Brief description of subject property and subject lot

The subject property is part of Lot 1762 ('the subject lot') and fronts for about 1,000ft on to the Subang Airport Road. It is sited about 10 miles (16km) from Kuala Lumpur, 1½ miles (2km) to the north of the Federal Highway and 3 miles (5km) from Subang International Airport.

The plot is irregular in shape and was planted with oil palm trees of about two years old.

As for its neighbourhood, the subject lot is situated outside the Petaling Jaya Municipality ('MPPJ') boundary where land use pattern was predominantly agriculture in nature being planted with either rubber or oil palm. The land use for the subject lot itself was agriculture. Within close vicinity of the subject lot at the material date were also a few ex-mining lands.

There were at that material date housing estates in the area but they were within the MPPJ boundary and these included Taman Mayang, Taman People's Park, Taman Rasa Sayang, Taman Megah located about 2–5km from the subject property. There was dispute whether Taman Seaport was located next to the subject lot.

Comparables

There were three common sets of comparables taken by both the government and private valuers for comparison purposes. There were other comparables relied upon by either side and they will be commented upon later in these grounds of decision.

Lot 111, Mukim of Sungai Buloh

The private valuer placed great emphasis on this lot.

This property was transacted at RM163,318 per acre in 1979 about one year two months before the material date. Although it is outside the MPPJ boundary it is immediately adjoining the MPPJ boundary and is next to a housing estate, Taman Megah unlike the subject lot which is 2.5km towards the west. Almost similar in area to the subject lot, it is however of regular shape unlike the subject property which is elogated in shape and which is more difficult to develop. There was an immediate potential for development (Taman Mayang Jaya) in respect of the lot unlike the subject property which was an agricultural estate under oil palm.

Counsel for the objector argued that the subject lot was near a housing estate 'Seaport Estate' and suggested that there was development, Seaport Estate, on Lots 1769 and 2441.

Although the government valuer could not recall the location of Lots 1769 and 2441 (he gave evidence 13 years after making his valuation report) he was adamant there was no development in these lots. The assessors and I accepted that evidence. In fact, the Legal Adviser submitted, and we found it compelling, that from the government valuer's report and his reference to the 'ex-mining land' within close vicinity of the subject lot, that Taman Seaport though it existed in 1981 could not have been on Lots 1769 and 2441 at the material date and the government valuer was wrong in his view that probably Taman Seaport (which has become Kelana Jaya) could have been located on Lots 1769 and 2441.

In any event the private valuer in his report at p 2 para 3 under the heading 'Location and Surrounding Development', has categorically stated that the other land uses in the immediate neighbourhood are rubber, oil palm, mining and the Subang Golf Course. This cannot but confirm that Taman Seaport could not have been on Lot 1769 which adjoins the subject lot along its eastern boundary.

What is clear is that as land gets further away from developed area within or near the MPPJ boundary the value of the land drops and as was pointed out earlier the subject lot is 2.5km from the MPPJ boundary unlike Lot 111 which immediately adjoins the MPPJ boundary. Counsel for the objector conceded that some downward adjustment should be made to the sale value of Lot 111 as it is nearer to Kuala Lumpur but how much should the adjustment be considering the many dissimilarities pointed out?

The downward adjustment of 60% made by the government valuer on the market value of Lot 111 is fair as he took into consideration two other sets of comparables (Lots 370, 371 and 372, Mukim Sungai Buloh, as one set, Lot 89, Mukim Sungai Buloh, as another) which showed both mutual comparables were transacted in 1979.

Lot 89 and Lots 370, 371 and 372, Mukim of Sungai Buloh

Lot 89 was transacted in 1979 at RM130,719 per acre while the other set of comparables (Lot 370, 371 and 372) located outside the MPPJ boundary was transacted also in 1979 at RM42,000 per acre. This showed a drop of price based on location (although in the same mukim) because Lot 89 was within the MPPJ boundary and the other set of comparables was located outside and the drop was 68%.

Lot 89 was not only within the MPPJ boundary, it adjoined all existing developments in MPPJ and had direct frontage to a dual-carriage way and was opposite the SEA Park Town Centre. It had immediate potential for development. It was similar in size to the subject lot but was regular in shape. Lots 370, 371 and 372 like the subject lot were agricultural and had no immediate potential for development but together they were ⅓

the size of the subject lot and regular and being smaller should have fetched a good price.

Lots 108, 263, 269 and 369, Mukim of Sungai Buloh

There is a need to consider the same comparable Lot 89 (as stated earlier, transacted in 1979 at RM130,791) and another set of comparables, Lots 108, 253, 269 and 369 Mukim of Sungai Buloh. The latter set of comparables, taken together, is within the MPPJ boundary, and was of immediate potential for development (Taman Mayang). The set was about $\frac{1}{3}$ the size of the subject property and regular in size (unlike an elongated shaped property like the subject lot which is difficult to develop). This latter set of comparables was transacted at only RM55,000 per acre. The differential in price was 58% and clearly shows that the land depreciates the further away it moves away (westwards) from Petaling Jaya. It will be remembered the subject lot is outside the MPPJ boundary and away from the development areas.

Lot 1168, Mukim of Damansara

Counsel for the objector relied on another comparable Lot 1168, Mukim of Damansara of 12.915 acres acquired on 8 October 1981 for the same purpose as the subject lot was acquired, ie the New Klang Valley Expressway. It was acquired at RM130,000 per acre. It is about the same size as the subject property but is located immediately adjacent to a housing estate lot. But as was pointed out by the Legal Adviser, the collector in making the award had probably taken into account that the portion acquired is close to Taman Mayang and was almost hugging the MPPJ boundary. The major portion of Lot 1168 stretches from its boundary with Taman Mayang and goes westwards. On the other hand, the subject property was an irregular lot and fairly far away from the MPPJ boundary and it did not have development works at its door step.

Another pertinent observation of the Legal Adviser was as regards previous awards in respect of many lots of land acquired for the purpose of the New Klang Valley Expressway (the same purpose for which the subject property lot was acquired). The awards of some of the lots were decided by the High Court as well as the Supreme Court based on more or less the same evidence. In *Pentadbir Tanah Daerah Petaling v Glenmarie Estate Ltd* [1992] 1 MLJ 331 at p 335, Mohamed Yusoff SCJ in delivering judgment of the Supreme Court upheld the award of the collector on the acquisition of Lot 3588 at RM60,000 per acre at market value in 1979 which is for a piece of land fronting Jalan Lapangan Terbang almost directly opposite the subject property.

This acquisition was from part of the Glenmarie Estate (Lot 3588). The area acquired was 9.014 acres. The private valuer in that case made a claim of RM140,000 per acre as against the collector's award of RM60,000 per acre. The High Court award was at RM117,000 per acre but on appeal to the Supreme Court, the award at RM60,000 per acre was upheld.

It is clearly wrong to say that the government valuer did not take into account the date of transaction of the comparables. He did. He gave due

allowance for expected increases after the dates of acquisition in 1979. This is what he said at p 10 of his first report:

> Sales evidence shows that prices in the year 1979 for such type lands in the area where housing development would be considered favourable in the not too distant future, but presently located outside the municipality area of Petaling Jaya, were in the region of RM42,000 to RM52,000 per acre for land approximating 20 acre size and about RM72,000 per acre for smaller acreage of about 4 acres in size.
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> Lands located within the Petaling Jaya Municipality area fetched far higher price as evidenced by the sale of Lot 89 @ RM130,719 per acre.
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> By late 1980 due to the good housing market in Petaling Jaya and also the shortage of developable land outside but close to Petaling Jaya Municipality boundary has resulted in the price increase of land to a new level as evidenced by the sale of the 97.97 acres of Lot 111, which borders Taman Megah, transacted in August 1980 at a price of RM163,318 per acre.

His assessment of the market value of the subject land at RM80,000 in fact was considered by the assessors and by myself as generous.

One other matter, the claim for surveyor's fees was disallowed. As was pointed out by Hashim Yeop A Sani SCJ in the Supreme Court case of *Harrisons and Crosfields (M) Sdn Bhd v Pemungut Hasil Tanah, Wilayah Persekutuan* [1988] 2 MLJ 299 there is nothing in the provisions of the Act and the Schedule thereto to justify the making of an award to include the surveyor's fees.

The objection was dismissed and it was ordered that the costs of the proceedings be borne by the objector out of which the two assessors will be paid RM100 each for each day's attendance.

Objection dismissed.

Reported by Hanim Kamaruddin